



October 3, 2000

Ms. Julie Joe
Assistant Attorney General
Office of the Attorney General
P o Box 12548
Austin, Texas 78711-2548

OR2000-3789

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139983.

The Office of the Attorney General (the "OAG") received a request for "[a]ll child support case-related materials regarding" two named individuals. You have identified some possibly responsive information in the custody of the OAG's Internal Security and Investigation Division (the "division"), but claim that that information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978).

However, an agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g.,* Attorney General Opinion MW-575 (1982), Open Records Decision Nos. 493 (1988), 272 (1981). If an administrative agency's investigation reveals possible criminal conduct

that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. See Gov't Code § 552.108(a)(1), (b)(1), Attorney General Opinion MW-575 (1982), Open Records Decision Nos. 493 (1988), 272 (1981). You inform us that the submitted information pertains to a criminal matter that the division has turned over to the appropriate law enforcement agencies for criminal prosecution. You also explain that law enforcement representatives have indicated that release of the information would interfere with their detection, investigation, and prosecution of the reported crime. Therefore, we find that release of the information would interfere with law enforcement and the division may withhold the submitted information from disclosure under section 552.108.

Because we find section 552.108 to be dispositive, we do not address your other claimed exception. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 139983

Encl. Submitted documents, tape

cc: Ms. Marla Pierson
Waco Tribune-Herald
P o Box 2588
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(w/o enclosures)